

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERNEST E. LIGGETT

Civil Action No. 14-1086

Plaintiff,

v.

United States Magistrate Judge
Maureen P. Kelly

THE BOROUGH OF BROWNSVILLE,
et al.

Defendants.

JURY TRIAL DEMANDED.

MOTION TO DISMISS AMENDED COMPLAINT
PURSUANT TO FED.R.CIV.P. 12(b)(5) AND 12(b)(6)

Defendants, Borough of Brownsville; Brownsville Borough Code Enforcement Officer, Edward E. Nicholson; Brownsville Borough Mayor, Lester J. Ward; Borough of Brownsville Council Members Jack J. Lawver, Thomas Bush, John T. Hosler, James S. Lawver, Charles B. Perkins, Ross T. Swords, Jr., and Tracy Zivkovich, through their attorneys, Thomas, Thomas & Hafer, LLP, respectfully submit this Motion to Dismiss Amended Complaint, based upon the following considerations:

1. Plaintiff commenced the within civil action in the Court of Common Pleas Fayette County on March 3, 2014, via Praecipe for Writ of Summons, and filed a Complaint on July 14, 2014.

2. Defendants removed the action to this Court via Notice of Removal filed on August 13, 2014, and thereafter filed a Motion to Dismiss the Complaint.

3. On September 16, 2014, Plaintiff filed an Amended Complaint, which is 62 pages and approximately 220 numbered paragraphs in length, and asserts, as against the 9 Moving Defendants, the following claims: (1) alleged violation of Equal Protection rights (Count 1); (2) alleged "Deprivation of Civil Rights, Color of State Law" under 42

U.S.C. §1983 (Count 2); (3) alleged civil liability under RICO, including alleged conspiracy to violate RICO; and (4) a claim of unjust enrichment.

4. As fully set forth in the accompanying Brief, all claims set forth in the Amended Complaint are barred on the basis of judicial estoppel.

5. Alternatively, as fully set forth in the accompanying Brief, the claims set forth in the Amended Complaint are barred by the statute of limitations and/or are otherwise legally insufficient.

6. Alternatively, as fully set forth in the accompanying Brief, the Amended Complaint should be dismissed due to Plaintiff's failure to effect service of process upon Moving Defendants.

7. To the extent that the Court declines to dismiss the Amended Complaint in its entirety, Moving Defendants respectfully request that the Amended Complaint be stricken for violation of Rule 8, and that Plaintiff be ordered to assert any remaining claims in a further amended pleading that complies with the requirements of Rule 8, including but not limited to the "short and plain statement" standard.

WHEREFORE, Defendants, Borough of Brownsville; Brownsville Borough Code Enforcement Officer, Edward E. Nicholson; Brownsville Borough Mayor, Lester J. Ward; Borough of Brownsville Council Members Jack J. Lawver, Thomas Bush, John T. Hosler, James S. Lawver, Charles B. Perkins, Ross T. Swords, Jr., and Tracy Zivkovich, respectfully request that this Honorable Court dismiss the Amended Complaint with prejudice pursuant to Rule 12(b)(6), or, alternatively, dismiss the Amended Complaint pursuant to Rule 12(b)(5). Said Defendants further respectfully request, to the extent that any claims remain upon the Court's disposition of the instant motion, that the Amended

Complaint be stricken and Plaintiff be required to file a further amended pleading asserting any such remaining claims in compliance with the requirements of Federal Rule of Civil Procedure 8.

Respectfully submitted,

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Borough of Brownsville Council
Members, Jack J. Lawver, Thomas
Bush, John T. Hosler, James S.
Lawver, Charles B. Perkins, Ross
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